

SCHEDULE 3

Article 7

Exercise of functions by officials other than police constables

PART 1

General

**Interpretation**

1.—(1) In this Schedule—

“constable” has the meaning given by section 99(1) of the Police and Fire Reform (Scotland) Act 2012(1);

“designated customs official” means a person who is designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009(2) or as a customs revenue official under section 11(1) of that Act;

“Home Office custody suite” means premises wholly or partly used for the detention of persons by designated customs officials;

“immigration offence” means—

- (a) an offence involving conduct which relates to the entitlement of one or more persons who are not nationals of the United Kingdom to enter, transit across, or be in, the United Kingdom (including conduct which relates to conditions or other controls on any such entitlement); or
- (b) (insofar as it is not an offence within paragraph (a)) an offence under the Immigration Acts or in relation to which a power of arrest is conferred on an immigration officer by the Immigration Acts;

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971(3);

“nationality offence” means an offence involving conduct which is undertaken for the purposes of, or otherwise in relation to, an enactment in—

- (a) the British Nationality Act 1981(4);
- (b) the Hong Kong Act 1985(5);
- (c) the Hong Kong (War Wives and Widows) Act 1996(6);
- (d) the British Nationality (Hong Kong) Act 1997(7);
- (e) the British Overseas Territories Act 2002(8);
- (f) an instrument made under any of those Acts;

“office of Revenue and Customs” means premises wholly or partly occupied by Her Majesty’s Revenue and Customs.

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(1) 2012 asp 8.  
(2) 2009 c.11.  
(3) 1971 c.77. The amendments to Schedule 2 are not relevant to this Order.  
(4) 1981 c.61.  
(5) 1985 c.15.  
(6) 1996 c.41.  
(7) 1997 c.20.  
(8) 2002 c.8.

(2) In sub-paragraph (1), “the Immigration Acts” has the meaning given by section 61 of the UK Borders Act 2007<sup>(9)</sup>.

## PART 2

### Application of 2016 Act to immigration officers

#### *Introductory*

#### **Application of 2016 Act in relation to immigration officers**

2.—(1) Chapters 1 to 6 of Part 1 of the 2016 Act<sup>(10)</sup> and sections 63, 65, 66 and 68 (power to arrest without warrant, other provisions about arrest and custody by police, and police searches) apply in relation to arrest and custody by immigration officers for an immigration offence or nationality offence and searches by them in connection with such an offence, subject to the adaptations in this Part.

(2) Sections 31 to 33 of the 2016 Act (rights of suspects at interview) apply, subject to those adaptations, in relation to a person who attends voluntarily for the purpose of being interviewed by an immigration officer for an immigration offence or nationality offence.

#### *General adaptations*

#### **General adaptations**

3. In the provisions of the 2016 Act mentioned in paragraph 2(1), references in column 1 of the table are, subject to the specific adaptations in this Part, to be read in accordance with column 2—

<i>1. Reference in 2016 Act</i>	<i>2. How reference is to be read</i>
a constable	an immigration officer
the rank of sergeant	the grade of immigration officer
the rank of inspector	the grade of chief immigration officer
police custody	immigration custody as defined by paragraph 6
a police station	a police station or Home Office custody suite

#### *Specific adaptations*

#### **Section 11 (authorisation for keeping in custody beyond 12 hour limit)**

4. In section 11(2), for paragraph (a) read—

“(a) is of or above the grade of chief immigration officer, and”.

#### **Section 66 (cases involving removal of person)**

5. In section 66, for subsection (3) read—

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<sup>(9)</sup> 2007 c.30.

<sup>(10)</sup> 2016 asp 1.

“(3) Anything seized by an immigration officer in the course of a search carried out under this section may be retained by the immigration officer or by a constable.”.

### *Supplementary*

#### **Immigration custody**

6.—(1) For the purposes of provisions of the 2016 Act as applied by this Part of this Schedule, a person is in immigration custody from the time the person is arrested by an immigration officer, or is transferred into the custody of an immigration officer, until any one of the events mentioned in sub-paragraph (2) occurs.

(2) The events are—

- (a) the person is released from custody;
- (b) the person is brought before a court in accordance with section 21(2) of the 2016 Act;
- (c) the person is brought before a court in accordance with section 28(2) or (3) of the Criminal Procedure (Scotland) Act 1995<sup>(11)</sup>;
- (d) the person is brought before a court in accordance with—
  - (i) any other enactment or rule of law which requires that a person in custody be brought before a court; or
  - (ii) a term of the warrant under which the person was arrested;
- (e) the person is transferred in accordance with the law into the custody of a person who is not an immigration officer;
- (f) the Principal Reporter directs under section 65(2)(b) of the Children’s Hearings (Scotland) Act 2011<sup>(12)</sup> that the person continue to be kept in a place of safety.

#### **Powers of search etc. under other enactments**

7. Where a person is arrested by an immigration officer under section 1 of the 2016 Act, an immigration officer may exercise—

- (a) any power that would be exercisable by an immigration officer if the person had been arrested under another enactment that confers power on an immigration officer to arrest in relation to the same offence; and
- (b) any power within section 47(3)(c) of the 2016 Act that would be exercisable by a constable if the person had been arrested by a constable.

## **PART 3**

### **Application of 2016 Act to designated customs officials**

#### *Introductory*

#### **Application of 2016 Act in relation to designated customs officials**

8.—(1) Chapters 1 to 6 of Part 1 of the 2016 Act and sections 63, 65, 66 and 68 (power to arrest without warrant, other provisions about arrest and custody by police, and police searches) apply in

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<sup>(11)</sup> 1995 c.46.

<sup>(12)</sup> 2011 asp 1.

relation to arrest and custody by designated customs officials and searches by them, subject to the adaptations in this Part.

(2) Sections 31 to 33 of the 2016 Act (rights of suspects at interview) apply, subject to those adaptations, in relation to a person who attends voluntarily for the purpose of being interviewed by a designated customs official.

### *General adaptations*

#### **General adaptations**

**9.** In the provisions of the 2016 Act mentioned in paragraph 9, references in column 1 of the table are, subject to the specific adaptations in this Part, to be read in accordance with column 2—

<i>1. Reference in 2016 Act</i>	<i>2. How reference is to be read</i>
a constable	a designated customs official
the rank of sergeant	the grade of officer
the rank of inspector	the grade of higher officer
police custody	customs custody as defined by paragraph 13
a police station	a police station or Home Office custody suite

### *Specific adaptations*

#### **Section 1 (power of a designated customs official)**

**10.**—(1) Section 1 applies only in relation to a Revenue and Customs offence relating to a general customs matter or customs revenue matter.

(2) In sub-paragraph (1)—

- (a) “Revenue and Customs offence” has the meaning given by subsection (2) of section 23A of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(13)</sup>;
- (b) “general customs matter” and “customs revenue matter” have the meaning given by Part 1 of the Borders, Citizenship and Immigration Act 2009.

#### **Section 11 (authorisation for keeping in custody beyond 12 hour limit)**

**11.** In section 11(2), for paragraph (a) read—

“(a) is of or above the grade of higher officer, and”.

#### **Section 66 (cases involving removal of person)**

**12.** Section 66 applies with the substitution for subsection (3) of—

“(3) Anything seized by a designated customs official in the course of a search carried out under this section may be retained by the designated customs official or by a constable.”.

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<sup>(13)</sup> Section 23A was inserted by the Finance Act 2007 (c.11); subsection (2) was amended by the Employment Act 2008 (c.24), section 12(2) and the Criminal Finances Act 2017 (c.22), section 18(2).

## *Supplementary*

### **Customs custody**

**13.**—(1) For the purposes of provisions of the 2016 Act as applied by this Part of this Schedule, a person is in customs custody from the time the person is arrested by a designated customs official, or is transferred in accordance with the law into the custody of a designated customs official, until any one of the events mentioned in sub-paragraph (2) occurs.

(2) The events are—

- (a) the person is released from custody;
- (b) the person is brought before a court in accordance with section 21(2) of the 2016 Act;
- (c) the person is brought before a court in accordance with section 28(2) or (3) of the Criminal Procedure (Scotland) Act 1995;
- (d) the person is brought before a court in accordance with—
  - (i) any other enactment or rule of law which requires that a person in custody be brought before a court; or
  - (ii) a term of the warrant under which the person was arrested;
- (e) the person is transferred in accordance with the law into the custody of a person who is not a designated customs official;
- (f) the Principal Reporter directs under section 65(2)(b) of the Children’s Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.

### **Powers of search etc. under other enactments**

**14.** Where a person is arrested by a designated customs official under section 1 of the 2016 Act<sup>(14)</sup>, a designated customs official may exercise any power that would be exercisable by a designated customs official if the person had been arrested under another enactment that confers power on a designated customs official to arrest in relation to the same offence.

## **PART 4**

### **Application of 2016 Act to officers of Revenue and Customs**

#### *Introductory*

### **Application of 2016 Act in relation to officers of Revenue and Customs**

**15.**—(1) Chapters 1 to 6 of Part 1 of the 2016 Act and sections 63, 65, 66 and 68 (power to arrest without warrant, other provisions about arrest and custody by police, and police searches) apply in relation to arrest and custody by officers of Revenue and Customs and searches by them, subject to the adaptations in this Part.

(2) Sections 31 to 33 of the 2016 Act (rights of suspects at interview) apply, subject to those adaptations, in relation to a person who attends voluntarily for the purpose of being interviewed by an officer of Revenue and Customs.

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(14) 2016 asp 1.

### *General adaptations*

#### **General adaptations**

**16.** In the provisions of the 2016 Act mentioned in paragraph 16, references in column 1 of the table are, subject to the specific adaptations in this Part, to be read in accordance with column 2—

<i>1. Reference in 2016 Act</i>	<i>2. How reference is to be read</i>
a constable	an officer of Revenue and Customs
the rank of sergeant	the grade of officer
the rank of inspector	the grade of higher officer
police custody	Revenue and Customs custody as defined by paragraph 21
a police station	a police station, office of Revenue and Customs or Home Office custody suite

### *Specific adaptations*

#### **Section 1 (power of an officer of Revenue and Customs)**

**17.**—(1) Section 1 applies only in relation to a Revenue and Customs offence.

(2) In sub-paragraph (1) “Revenue and Customs offence” has the meaning given by subsection (2) of section 23A of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(15)</sup>.

#### **Section 11 (authorisation for keeping in custody beyond 12 hour limit)**

**18.** In section 11(2), for paragraph (a) read—

“(a) is of or above the grade of higher officer, and”.

#### **Section 65 (limitation on what enables search of person not in custody)**

**19.**—(1) Section 65 does not limit any power of an officer of Revenue and Customs to carry out a protective search—

- (a) of a person whom the officer finds in or on premises entered by the officer under the authority of a warrant under section 23E of the Criminal Law (Consolidation) (Scotland) Act 1995<sup>(16)</sup>; or
- (b) of a person in relation to whom the officer is exercising any power under section 23M of that Act.

(2) In this paragraph “protective search” means a search in the circumstances described in section 66(1)(b) of the 2016 Act for the purpose described in section 66(2).

#### **Section 66 (cases involving removal of person)**

**20.** In section 66, for subsection (3) read—

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<sup>(15)</sup> 1995 c.39. Section 23A was inserted by the Finance Act 2007 (c.11); subsection (2) was amended by the Employment Act 2008 (c.24), section 12(2) and the Criminal Finances Act 2017 (c.22), section 18(2).

<sup>(16)</sup> Section 23E was inserted by the Finance Act 2007 (c.11).

“(3) Anything seized by an officer of Revenue and Customs in the course of a search carried out under this section may be retained by the officer or by a constable.”.

### *Supplementary*

#### **Revenue and Customs custody**

**21.**—(1) For the purposes of provisions of the 2016 Act as applied by this Part of this Schedule, a person is in Revenue and Customs custody from the time the person is arrested by an officer of Revenue and Customs, or is transferred into the custody of an officer of Revenue and Customs, until any one of the events mentioned in sub-paragraph (2) occurs.

(2) The events are—

- (a) the person is released from custody;
- (b) the person is brought before a court in accordance with section 21(2) of the 2016 Act;
- (c) the person is brought before a court under section 28(2) or (3) of the Criminal Procedure (Scotland) Act 1995<sup>(17)</sup>;
- (d) the person is brought before a court in accordance with—
  - (i) any other enactment or rule of law which requires that a person in custody be brought before a court; or
  - (ii) a term of the warrant under which the person was arrested;
- (e) the person is transferred in accordance with the law into the custody of a person who is not an officer of Revenue and Customs;
- (f) the Principal Reporter directs under section 65(2)(b) of the Children’s Hearings (Scotland) Act 2011 that the person continue to be kept in a place of safety.

#### **Powers of search etc. under other enactments**

**22.** Where a person is arrested by an officer of Revenue and Customs under section 1 of the 2016 Act, an officer of Revenue and Customs may exercise any power that would be exercisable by such an officer if the person had been arrested under another enactment that confers power on an officer of Revenue and Customs to arrest in relation to the same offence.

## **PART 5**

### **Application of 2016 Act to designated NCA officers**

#### **Application to designated NCA officers: adaptations**

**23.**—(1) In the application in relation to a designated NCA officer of a provision of the 2016 Act that is applied by this Schedule in relation to an immigration officer, a general customs official or an officer of Revenue and Customs, the following entries are substituted for the corresponding entries in the table in paragraph 3, 9 or 16—

<i>1. Reference in 2016 Act</i>	<i>2. How reference is to be read</i>
the rank of sergeant	grade 4
the rank of inspector	grade 3

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(17) 1995 c.46.

(2) In section 11(2) of the 2016 Act, in its application in relation to a designated NCA officer, for paragraph (a) read—

“(a) is of or above grade 3, and”.

(3) In this paragraph—

“designated NCA officer” means a National Crime Agency officer designated under section 10 of the Crime and Courts Act 2013<sup>(18)</sup> as having the powers of an immigration officer, a general customs official or an officer of Revenue and Customs;

“general customs official” means a person who is designated as a general customs official under section 3(1) of the Borders, Citizenship and Immigration Act 2009<sup>(19)</sup>.

## PART 6

### Transfers and co-operation

#### Transfer

**24.**—(1) A person who is in immigration custody, customs custody, Revenue and Customs custody or police custody as a result of being arrested under section 1 of the 2016 Act or of being transferred under this paragraph, may be transferred as follows.

(2) A person in immigration custody may be transferred to customs custody or police custody.

(3) A person in customs custody may be transferred to Revenue and Customs custody or police custody.

(4) A person in Revenue and Customs custody may be transferred to customs custody or police custody.

(5) A person in police custody may be transferred to immigration custody, customs custody or Revenue and Customs custody.

(6) This paragraph does not affect any other power of transfer.

#### Co-operation

**25.**—(1) Where in relation to anything done by a relevant officer (“R”) a provision of the 2016 Act, as applied by this Schedule, confers a power or imposes a duty on a relevant officer who may or must be a person other than R, the power may be exercised or the duty performed by a constable (and where it is, the power or duty is to be read without the modifications made by this Schedule).

(2) Where in relation to anything done by a constable (“C”)—

(a) a provision of the 2016 Act confers a power or imposes a duty on a constable who may or must be a person other than C; and

(b) the provision is applied by this Schedule to a relevant officer,

the power may be exercised or the duty performed by a relevant officer (and where it is, the power or duty is to be read with the modifications made by this Schedule).

(3) In this paragraph “relevant officer” means an immigration officer, a designated customs official or an officer of Revenue and Customs.

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<sup>(18)</sup> 2013 c.22; section 10 was amended by the Policing and Crime Act 2017 (c.3), section 158(3).

<sup>(19)</sup> 2009 c.11.